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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re N.B., et al., Persons Coming Under  
the Juvenile Court Law.

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.D.,

Defendant and Appellant.

E061946

(Super.Ct.Nos J241203, J241204,  
J241205 & J244896)

OPINION

APPEAL from the Superior Court of San Bernardino County. Cheryl C. Kersey,  
Judge. Affirmed.

Donna P. Chirco, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Jean-Rene Basle, County Counsel, and Adam E. Ebright, Deputy County Counsel,  
for Plaintiff and Respondent.

Defendant and appellant S.D. (mother) is the mother of four children, A.L., S.B., N.B., and N.L (children). At the time of the challenged order, the children were ages seven, five, three, and two. Mother appeals from the juvenile court's order of September 19, 2014, terminating her parental rights and selecting adoption as the children's permanent plan. Mother argues the court erred when it declined to apply the parental relationship benefit exception to the preference for adoption at the hearing held under Welfare and Institutions Code, section 366.26.<sup>1</sup> As discussed below, we affirm.

### **FACTS AND PROCEDURE**

#### *Detention—October 2011*

The three oldest children, then ages four, two and ten months, were removed from mother's care in October 2011, after two-year-old S.B. was admitted to the hospital with a suspicious head injury. Mother had sought medical treatment for S.B. after she undid the child's hair from a braided pony tail and found that an area of S.B.'s head was soft and swollen. Mother and S.B.'s father ("Mr. B.") were separated and getting a divorce.<sup>2</sup> S.B. lived with Mr. B. Mother was supposed to have S.B. on weekends, but had not seen her for about two months. A week prior to mother discovering S.B.'s injury, Mr. B. had called mother and asked her to pick up the child from him. Mother stated that S.B. had the braided pony tail when mother picked her up from Mr. B. S.B. was found to have a

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<sup>1</sup> All section references are to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> Mr. B. was later determined not to be S.B.'s or N.B.'s biological father.

complex skull fracture, scalp swelling, areas of hair missing, bruising to her face consistent with blunt force trauma, numerous scars, an injured tooth, a torn upper frenulum and a healed lower lip injury, all consistent with child abuse. Mother told the social worker that she did not know how S.B. got the skull fracture, but stated she had been concerned about S.B. in Mr. B's care because she had previously noticed injuries to the child, including black eyes, scratches and bruises. Although San Bernardino County Children's and Family Services (CFS) acknowledged that mother had sought medical treatment for S.B., they were still concerned for S.B. and the other two children in mother's care. CFS had received at least four reports of physical abuse to S.B. in the previous two months. A.L. and N.B. were removed from mother's home and S.B. was placed on a hospital hold.

On October 17, 2011, CFS filed a section 300 petition as to each of the three children alleging failure to protect (subd. (b)) as to all three, severe physical abuse (subd. (e)) as to S.B. and abuse of sibling (subd. (j)) as to A.L. and N.B.

At the detention hearing held on October 18, 2011, the juvenile court ordered the children detained out of mother's home and ordered supervised visitation for one hour per week.

*Jurisdiction and Disposition—November 2011 to March 2012*

CFS filed the jurisdiction and disposition report on November 7, 2011, in which it recommended the juvenile court find the allegations in the section 300 petitions to be true, remove the children and place them in out-of-home care, and to offer reunification

services. Mother told the investigating police officer that she noticed S.B. had a black eye when she picked up S.B. from Mr. B., and that she had called police. Mother stated police did not respond because “they were aware from previous reports that the child was under a doctor’s care for an allergic reaction to a bug bite near the eye and was given medication for this.” Mother stated she had previously reported her concerns to police and CFS that Mr. B. was abusing S.B. Mother stated she was engaged to Mr. L., who was A.L.’s father.<sup>3</sup> After extensive interviews at the police station, Mr. B.’s girlfriend eventually told detectives that S.B. should live with her mother because Mr. B. has a bad temper. She stated Mr. B. had fractured S.B.’s skull and gave the following narrative. She heard S.B. crying while Mr. B. was giving S.B. a bath. Mr. B. came out of the bathroom and said he had hit the child the wrong way and hurt her bad. Mr. B. told his girlfriend to fix S.B.’s hair up in a pony tail to hide the injury so they could send S.B. to mother.

The social worker reported that mother and Mr. L. “have had unsettled living arrangements and have been staying with friends and relatives, even before removal.” A.L. was removed from mother in June 2007 at birth, while mother herself was still a minor in foster care. Mother received reunification services and A.L. was returned to mother in October 2009. Because mother stated she intended to make a life with Mr. L. and raise the children with him, CFS recommended Mr. L. participate in services. Mr. L. had two other children in dependency. Mr. L. was a non-custodial, non-offending parent,

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<sup>3</sup> Mr. L. was later determined not to be A.L.’s biological father.

but his reunification services were terminated in June 2011 after he failed to participate, at all, in services. All three children were placed together in a foster home while maternal relatives were being assessed for placement. Supervised visits with mother were going well.

In an addendum report filed January 11, 2012, CFS reported confirmation that mother had physically abused A.L. on a number of occasions, resulting in a pattern of scars and hair loss consistent with physical abuse. A witness familiar with both mother and Mr. B. stated she had seen mother physically and verbally abuse A.L. and heard A.L. describe physical abuse. The witness described mother as a having short fuse and being in need of anger management. She stated mother would have the four-year-old A.L. take care of her younger siblings, including making a bottle for the infant N.B., and would hit A.L. for not watching the children to mother's satisfaction. A.L.'s true biological father (not Mr. L.) told the social worker that mother is "bad" with her children and "whops" them mostly with a belt.

At the jurisdiction and disposition hearing eventually held on March 29, 2012, the juvenile court found the amended allegations true and maintained out-of-home placement. The court ordered reunification services for mother and supervised visits once per week, with CFS authorized to liberalize visits. The court authorized CFS to allow unsupervised, overnight, and weekend visits, as well as return to mother, by approval packet.

*Six-Month Review—October 2012*

In a status review report filed September 20, 2012, CFS recommended mother continue to receive reunification services. Mother and Mr. L. had a child together in June 2012. The child was detained because mother was living with Mr. L., who had reunification services terminated for two other children for not participating in services, including substance abuse treatment. Mr. L. was being offered reunification services for the couple's new infant, N.L., but it was too early to assess his progress. Mother was participating in services, with some interruption for the high-risk pregnancy and birth. All four children were placed with a maternal relative. Mother stated she was committed to raising the four children with Mr. L. Mother was visiting with the children unsupervised for four hours each week, but Mr. L. was not allowed to be present. Mother was referred to Parent Child Interactive Therapy (PCIT) after she reacted to a misbehaving child, during a supervised visit, by raising her hand as if to hit the child. The children were doing well in their placement, after some initial behavioral problems. Mother expressed concerns regarding the relative placement and the caregiver, but CFS found no problems.

At the six-month review hearing held on October 1, 2012, the juvenile court continued services and set the 12-month review hearing for December 18. Mother's counsel stated mother was no longer living with Mr. L.

### *Twelve-Month Review—December 2012*

In the status review report filed December 7, 2012, CFS recommended continuing services to mother. Mother was working on getting suitable housing for herself and the children. CFS expressed the greatest concern as being Mr. L.'s complete lack of participation in the reunification services that he had been ordered to complete as part of N.L.'s case plan. Mother completed a parenting education class and continued to attend anger management. Mother's therapist recommended mother resume the individual counseling that was interrupted by N.L.'s birth in June. Mother had completed 12 sessions. Mother's PCIT therapist reported mother and S.B. had attended five sessions and seemed to be attached to each other. The therapist recommended such sessions continue. The 22-year-old mother was temporarily living with family and working full time. She stated she was no longer in a relationship with Mr. L., saying "It is hard to let go of someone you love, but I am willing to do anything for my children." The children were doing well in their relative placement, but mother continued to complain that they were being neglected and physically abused. A Team Decision Making meeting was held on November 6, 2012, and it was determined the children should remain in the placement until they could be reunited with mother. However, on November 26, 2012, the relative caretaker asked that the children be removed as soon as possible. The caretaker stated "the mother has called the police too many times thus jeopardizing my own stability and housing."

At the 12-month review hearing held on December 18, 2012, the court continued services to mother and authorized the social worker to return the children to mother on family maintenance by approval packet once she obtained adequate housing.

*Change of Placement to Foster Care—January 2013*

On January 11, 2013, CFS filed a section 387 supplemental petition for more restrictive placement, asking the disposition be modified so the children could be placed with a foster caretaker couple. In the accompanying detention report, CFS stated the relative caregiver had asked on January 7, 2013, to have the children removed from her home because of the deteriorating health of her own developmentally delayed child, who was requiring frequent hospital visits for seizures. No other relatives were available to care for the children. The juvenile court approved the move at a hearing held on January 14, 2013.

*18-Month Review—June 2013*

In the status review report filed April 9, 2013, CFS recommended the children be returned to mother on a 29-day trial visit and be returned on family maintenance by informational packet should the visit be successful. Mother had obtained suitable housing and was in the process of completing her plan requirements, including “demonstrate[ing] a complete attitude adjustment toward CFS involvement.” Mother was not working but was seeking employment and about to start school. On March 19, 2013, the court terminated Mr. L.’s reunification services as to the infant N.L. Mother was doing well in therapy but had missed a few individual therapy sessions with a new



therapist and with the PCIT therapist because, as she told them, she was being stalked and was in fear for her life. The PCIT therapist described mother as being “ahead of the game,” but stated she did need to continue therapy. Mother reported Mr. L. was stalking her by telephone and in person, and threatened to kill her and the children. In February, mother ran into Mr. L. at a friend’s house, where he assaulted her, hitting her on the chest and head. Mother called police and made a report. She was in the process of filing for a restraining order. The children were having weekend visits with mother that were apparently going well. The foster parent did not report any problems with the children. A.L., the oldest, was in kindergarten, and told the social worker that she liked living in this foster home better than the previous placement with the maternal relative.

The review hearing set for April 11, 2013, was continued to allow mother to re-enroll in and complete PCIT before starting the 29-day trial visit. The juvenile court urged mother to go ahead and get a restraining order against Mr. L., contrary to police instructions for mother to wait until they had completed their investigation. The court advised mother to speak with her attorney regarding this. Mother’s counsel told the court “The social worker herself told me that when mother visits with the children, the mother is bonded to the children, and the visits go very well.”

In an addendum report filed May 20, 2013, CFS changed its recommendation to terminating mother’s reunification services and setting a section 366.26 hearing. During the social worker’s monthly visit to the children’s placement in April, the children told the social worker that Mr. L. was present during their unsupervised weekend visit, saying

“We were with him for two days and I got to play with him outside while my mom was sleeping inside with the babies.” Mother had told the children to lie if asked whether Mr. L. was present during their visits. Mother denied this when questioned by the social worker. A social worker for the foster family agency reported that A.L. stated in early May that Mr. L. had threatened to kill her and her siblings, and that he had used corporal punishment to discipline N.B. and S.B. for making too much noise. On May 6, the child abuse hotline received a referral alleging general neglect by the mother and physical abuse by an unknown father. On May 15, A.L. and S.B. told the social worker that mother and Mr. L. were arguing and that Mr. L. threatened to kill mother and the children. S.B. said that Mr. L. “whoops us with a belt. He is mean to us . . . I do not want to see him again.” A.L. confirmed that Mr. L. hit N.B. and S.B. with a belt and his open hand on their buttocks because they would not listen to him. A.L. further said that mother was not present when Mr. L. hit the children, and that they spent Saturday and Sunday with Mr. L. on their weekend visit. Mother denied this when questioned and accused the social worker of coercing the children. CFS discontinued unsupervised visits.

The contested 18-month hearing was held on June 10, 2013. Mother’s sister testified that many of the unsupervised visits took place at her home and that Mr. L. was never present and the children never mentioned having seen him or being hurt by him. Mother’s roommate testified similarly. The social worker testified that the children and mother appeared to be bonded and that mother was appropriate during visits. The social

worker clarified that, during her monthly visit to the children in their placement in April, A.L. told her that the last unsupervised weekend visit had taken place at the home of Mr. L.'s parents. The social worker also clarified that Mr. L. is the person who had been stalking mother. The social worker opined that, while mother obviously loves her children, she had not benefited from the 20 months of services because she still allows Mr. L. to be around them despite his violence and threats of violence toward her and the children. Mother testified that the only time Mr. L. had been around the children in the previous six months was at a party at Mr. L.'s grandparents' home. Mother stated she had been told Mr. L. would not be at the party and that she left with the children "immediately" after discovering Mr. L. was present. Mother stated she is afraid of Mr. L. and that she had not allowed him to be around the children. Mother ran into Mr. L. in February at a friend's house, at which time he assaulted her. Mother had been in a romantic relationship with Mr. L. since she was 16 years old and herself in foster care. Mother and Mr. L. were "together" at the time Mr. B. fractured S.B.'s skull, but Mr. L. was incarcerated at the time. With the agreement of the parties, the judge went to the playroom to speak with A.L. A.L. wanted to speak with the judge but was afraid to come into the court room. The judge came back into court and reported that A.L. said her mom knows she is not supposed to spend time with Mr. L., and that the children are not supposed to spend time with Mr. L., but she does it anyway. Both A.L. and S.B. had told mother they do not want to spend time with Mr. L. After hearing argument from the parties, the court terminated reunification services and set a section 366.26 hearing for

October 8, 2013. The court maintained supervised visitation at once per week for two hours.

*Section 366.26 Hearing–September 19, 2014*

In the report filed September 27, 2013, CFS recommended terminating mother's parental rights and selecting adoption by as the children's permanent plan. The current foster parents declined to adopt the children or become legal guardians, so an adoptive family who would take all four children would need to be found.

The section 366.26 hearing was continued several times to allow CFS to find a home that would provide permanency for all four children.

The children were moved to a new foster placement together on May 7, 2014, after the foster parents gave a seven-day notice asking for the children to be removed. The parents reported A.L. was acting inappropriately, which included lying, stealing, destroying property and "being generally disrespectful to all adults."

In an addendum report filed September 10, 2014, CFS reported all four children had been placed together with prospective adoptive parents on July 11, 2014 and were reportedly transitioning fairly well. The home is located in Kern County.

The section 366.26 hearing was eventually held on September 19, 2014. Children's counsel asked for a 90-day continuance before terminating parental rights because CFS had been unable to arrange for services in Kern County, including needed counseling for A.L. The juvenile court denied the request, reasoning that children's counsel would still be representing them for another six months and could continue to

advocate on their behalf. Mother testified that she was visiting with the children for two hours each week, including since they were placed in Kern County. Mother testified that the children are always happy to see her at visits and that, when the visits are over, the children cry and hold on to her. Mother stated the children ask her all the time if they are going to come home. The social worker testified that the children had been living with the prospective adoptive parents for about two months and opined that “the bonding process is starting. It’s more of an attachment, not a bonding.” The social worker stated the children appeared to love the foster parents. The juvenile court terminated mother’s parental rights and selected adoption as the permanent plan.

This appeal followed.

## **DISCUSSION**

Mother contends that the juvenile court should have found that the beneficial parental relationship exception to the statutory preference for adoption applied and that the order terminating her parental rights must be reversed.

“Adoption is the Legislature’s preferred permanent plan. [Citation.]” (*In re D.M.* (2012) 205 Cal.App.4th 283, 290.) Thus, as a general rule, at a section 366.26 hearing, if the juvenile court finds that the child is adoptable, it must terminate parental rights. (Welf. & Inst. Code, § 366.26, subds. (b)(1) & (c)(1).) There is an exception to this rule, however, if “[t]he court finds a compelling reason for determining that termination would be detrimental to the child” (*id.*, subd. (c)(1)(B)) for one of six specified statutory reasons. (*Id.*, subd. (c)(1)(B)(i)-(vi).) One such reason is that “[t]he parents have

maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (*Id.*, subd. (c)(1)(B)(i).)

“The ‘benefit’ prong of th[is] exception requires the parent to prove his or her relationship with the child ‘promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.’ [Citations.]” (*In re K.P.* (2012) 203 Cal.App.4th 614, 621.) “‘If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.’ [Citation.]” (*In re Michael G.* (2012) 203 Cal.App.4th 580, 594.)

“‘The burden falls to the parent to show that the termination of parental rights would be detrimental to the child under one of the exceptions. [Citation.]’ [Citations.]” (*In re C.B.* (2010) 190 Cal.App.4th 102, 122.)

The existence of a beneficial parent-child relationship is a factual issue; we review the trial court’s findings on this issue for substantial evidence. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) “‘On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.’ [Citation.]” (*In re C.F.* (2011) 193 Cal.App.4th 549, 553.) Thus, “a challenge to a juvenile court’s finding that there is no beneficial relationship amounts to a contention that the ‘undisputed facts lead to only one

conclusion.’ [Citation.] Unless the undisputed facts established the existence of a beneficial parental . . . relationship, a substantial evidence challenge to this component of the juvenile court’s determination cannot succeed.” (*Bailey J., supra*, 189 Cal.App.4th at p. 1314.)

Here, CFS rightly concedes that mother meets the first prong—she visited regularly with the children and took full advantage of every opportunity to see them. However, on this record mother cannot show that her relationship with the children outweighs the well-being to the children of a permanent home with adoptive parents. The parties agree that the factors set forth in *In re Autumn H.* (1994) 27 Cal.App.4th 567 and cited in *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1206, regarding whether the parent’s relationship with the children outweighs the benefit from a permanent, apply here. These factors are: (1) The age of the children; (2) The portion of the children’s lives spent in mother’s custody; (3) The positive or negative effect of interaction between mother and the children; and (4) The children’s particular needs. Even after this extended period of dependency, the children are still relatively young—ages seven, five, three and two at the section 366.26 hearing. The youngest, N.L., spent only days in mothers care, and N.B. only his first ten months. S.B. has been out of her mother’s care—three years—longer than the two first years of her life that she lived with mother. Even the oldest child, A.L., was only in mother’s custody for two years, from October 2009 to October 2011, and out of her custody for five years. Mother’s interaction with the children during the dependency was for the most part positive, with some glaring—

and overriding—exceptions. To begin with, mother’s habit of disciplining the children using violence, although not the initial cause of the dependency, was eventually well-documented. Recall that two separate people familiar with the family told the social worker that mother would spank the very young children with a belt while they were in her custody, and A.L., who apparently bore the brunt of this abuse at the age of four, was found to have a cumulative pattern of injuries consistent with physical abuse. Further, even while on a supervised visit in full view of a CPS worker, mother instinctively raised her hand as if to hit one of the children, which resulted in the PCIT requirement to address this. Finally, even though mother was on the verge of getting her children back on family maintenance, and despite the many months of services, mother allowed Mr. L. to spend time with the children. This was contrary to the court’s orders and the expressed wishes of both A.L. and S.B., and came after both mother and the children reported that Mr. L. had threatened to kill them all. This also resulted in A.L. and S.B. suffering physical abuse from Mr. L. during a period in which mother and CFS were supposed to be working together to provide for the children’s safety. Given this overwhelmingly negative result of the interaction between mother and the children, and their need for stability after three years of living in limbo in several different placements, mother cannot establish that the juvenile court erred when it declined to invoke the beneficial parental relationship exception to the preference for adoption.

#### **DISPOSITION**

The juvenile court’s orders are affirmed.



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RAMIREZ

P. J.

We concur:

McKINSTER

J.

KING

J.